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OPEN MEETING ITEM



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BRIAN C. McNEIL
EXECUTIVE SECRETARY

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ARIZONA CORPORATION COMMISSION

2001 APR 18 P 2:55

DATE: APRIL 18, 2001

DOCKET NOS: T-03616A-98-0486

TO ALL PARTIES:

AZ CORP COMMISSION
DOCUMENT CONTROL

Arizona Corporation Commission

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APR 18 2001

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Enclosed please find the recommendation of Administrative Law Judge Jane Rodda.
The recommendation has been filed in the form of an Order on:

NETWORK INTERNATIONAL, LC
(CC&N/RESELLER)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and ten (10) copies of the exceptions with the Commission's Docket Control at the address listed below by **12:00 noon** on or before:

APRIL 27, 2001

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Working Session and Open Meeting to be held on:

MAY 1, 2001 AND MAY 2, 2001

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250.

BRIAN C. McNEIL
EXECUTIVE SECRETARY

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 WILLIAM A. MUNDELL
CHAIRMAN

3 JIM IRVIN
COMMISSIONER

4 MARC SPITZER
COMMISSIONER

5
6 IN THE MATTER OF THE APPLICATION OF
7 NETWORK INTERNATIONAL, LC FOR A
8 CERTIFICATE OF CONVENIENCE AND
9 NECESSITY TO PROVIDE COMPETITIVE
10 RESOLD INTEREXCHANGE
11 TELECOMMUNICATIONS SERVICES, EXCEPT
12 LOCAL EXCHANGE SERVICES

DOCKET NO. T-03616A-98-0486

DECISION NO. _____

ORDER

10 Open Meeting
May 1 and 2, 2001
11 Phoenix, Arizona

12 **BY THE COMMISSION:**

13 Having considered the entire record herein and being fully advised in the premises, the
14 Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

15 **FINDINGS OF FACT**

16 1. On August 27, 1998, Network International, LC dba NIL LLC ("Applicant" or "NIL")
17 filed with Docket Control of the Arizona Corporation Commission ("Commission") an application
18 for a Certificate of Convenience and Necessity ("Certificate") to provide competitive resold
19 interexchange telecommunications services, except local exchange services, within the State of
20 Arizona.

21 2. In Decision No. 58926 (December 22, 1994), the Commission found that resold
22 telecommunications providers ("resellers") were public service corporations subject to the
23 jurisdiction of the Commission.

24 3. Applicant is an Arizona limited liability company, authorized to do business in
25 Arizona since 2000.

26 4. Applicant is a switchless reseller, which purchases telecommunications services from
27 facilities-based carriers.

28 5. On July 25, 2000, NIL filed an Affidavit of Publication indicating compliance with the

Commission's notice requirements.

6. On August 18, 2000, the Commission's Utilities Division Staff ("Staff") filed its Staff Report in this matter. In its Report, Staff stated that NIL has provided unaudited financial statements for the year ended December 31, 1999. These financial statements list assets of \$3.5 million, total equity of \$1.8 million, and net income of \$870,181. Based on the foregoing, Staff believes that Applicant lacks adequate financial resources to be allowed to charge customers any prepayments, advances, or deposits without either establishing an escrow account or posting a surety bond to cover such prepayments, advances, or deposits. However, the Applicant has indicated as part of its application that it does not charge its customers for any prepayments, advances or deposits. If at some future date, the Applicant wants to charge customers any prepayments, advances or deposits, it must file information with the Commission that demonstrates the Applicant's financial viability. Upon receipt of such filing, Staff will review the information and the Commission will make a determination concerning the Applicant's financial viability and whether customer prepayments, advances or deposits should be allowed. Additionally, Staff believes that if the Applicant experiences financial difficulty, there should be minimal impact to its customers. Customers are able to dial another reseller or facilities-based provider to switch to another company.

7. Staff recommended approval of the application subject to the following conditions:

(a) The Applicant should be ordered to comply with all Commission rules, orders, and other requirements relevant to the provision of intrastate telecommunications service;

(b) The Applicant should be ordered to maintain its accounts and records as required by the Commission;

(c) The Applicant should be ordered to file with the Commission all financial and other reports that the Commission may require, and in a form and at such times as the Commission may designate;

(d) The Applicant should be ordered to maintain on file with the Commission all current tariffs and rates, and any service standards that the Commission may require;

(e) The Applicant should be ordered to comply with the Commission's rules and modify its tariffs to conform to these rules if it is determined that there is a conflict between the Applicant's tariffs and the Commission's rules;

1 (f) The Applicant should be ordered to cooperate with Commission investigations
2 of customers complaints;

3 (g) The Applicant should be ordered to participate in and contribute to a universal
4 service fund, as required by the Commission;

5 (h) The Applicant should be ordered to notify the Commission immediately upon
6 changes to the Applicant's address or telephone number;

7 (i) The Applicant's intrastate toll service offerings should be classified as
8 competitive pursuant to Commission rules;

9 (j) The rates proposed by the Applicant in its most recently filed tariffs should be
10 approved on an interim basis. The maximum rates for these services should be the
11 maximum rates proposed by the Applicant in its proposed tariffs. The minimum rates
12 for the Applicant's competitive services should be the Applicant's total service long
13 run incremental costs of providing those services;

14 (k) In the event that the Applicant states only one rate in its proposed tariff for a
15 competitive service, the rate stated should be the effective (actual) price to be charged
16 for the service as well as the service's maximum rate; and,

17 (l) The Applicant should be ordered to file conforming tariffs within 30 days of an
18 Order in this matter, and in accordance with the Decision.

19 8. In its comments concerning fair value rate base, filed on January 4, 2001, Staff further
20 recommended approval of NIL's applications subject to the following conditions:

21 (a) That NIL should be required to file in this Docket, within 18 months of the
22 date it first provides service following certification, sufficient information for
23 Staff analysis and recommendation for a fair value finding, as well as for an
24 analysis and recommendation for permanent tariff approval. This information
25 must include, at a minimum, the following:

- 26 1. A dollar amount representing the total revenue for the first twelve months
27 of telecommunications service provided to Arizona customers by NIL
28 following certification, adjusted to reflect the maximum rates that NIL has
requested in its tariff. This adjusted total revenue figure could be
calculated as the number of units sold for all services offered times the
maximum charge per unit.
2. The total actual operating expenses for the first twelve months of
telecommunications service provided to Arizona customers by NIL
following certification.
3. The value of all assets, listed by major category, used for the first twelve
months of telecommunications services provided to Arizona customers by

1 NIL following certification. Assets are not limited to plant and equipment.
2 Items such as office equipment and office supplies should be included in
3 this list.

- 4 (b) NIL's failure to meet the condition to timely file sufficient information for a
5 fair value finding and analysis and recommendation of permanent tariffs shall
6 result in the expiration of the Certificate of Convenience and Necessity and of
7 the tariffs.

8 9. The Staff Report stated that Applicant has no market power and the reasonableness of
9 its rates would be evaluated in a market with numerous competitors.

10 10. On August 29, 2000, the Arizona Court of Appeals, Division One ("Court") issued its
11 Opinion in Cause No. 1 CA-CV 98-0672 ("Opinion"). The Court determined that Article XV,
12 Section 14 of the Arizona Constitution requires the Commission to "determine fair value rate base for
13 all public service corporations in Arizona prior to setting their rates and charges."

14 11. On October 26, 2000, the Commission filed a Petition for Review to the Arizona
15 Supreme Court.

16 12. On February 13, 2001, the Commission's Petition was granted.

17 CONCLUSIONS OF LAW

18 1. Applicant is a public service corporation within the meaning of Article XV of the
19 Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

20 2. The Commission has jurisdiction over Applicant and the subject matter of the
21 application.

22 3. Notice of the application was given in accordance with the law.

23 4. Applicant's provision of resold interexchange telecommunications services is in the
24 public interest.

25 5. Applicant is a fit and proper entity to receive a Certificate for providing competitive
26 interexchange telecommunications services as a reseller in Arizona.

27 6. Staff's recommendations in Findings of Fact Nos. 6, 7, and 8 are reasonable and
28 should be adopted.

ORDER

IT IS THEREFORE ORDERED that the application of Network International, LC dba NIL LLC for a Certificate of Convenience and Necessity for authority to provide competitive resold interexchange telecommunications services, except local exchange services, shall be and the same is hereby granted, except that Network International, LC dba NIL LLC shall not be authorized to charge customers any prepayments, advances, or deposits. In the future, if Network International, LC dba NIL LLC desires to initiate such charges, it must file information with the Commission that demonstrates the Applicant's financial viability. Staff shall review the information provided and file its recommendation concerning financial viability and/or the necessity of obtaining a performance bond within thirty (30) days of receipt of the financial information, for Commission approval.

IT IS FURTHER ORDERED that Network International, LC dba NIL LLC shall comply with the Staff recommendations set forth in Findings of Fact Nos. 6, 7, and 8.

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1 IT IS FURTHER ORDERED that within 30 days of the effective date of this Decision,
 2 Network International, LC dba NIL LLC shall notify the Compliance Section of the Arizona
 3 Corporation Commission of the date that it will begin or has begun providing service to Arizona
 4 customers.

5 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

6 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

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9 CHAIRMAN	COMMISSIONER	COMMISSIONER
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IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
 Secretary of the Arizona Corporation Commission, have
 hereunto set my hand and caused the official seal of the
 Commission to be affixed at the Capitol, in the City of Phoenix,
 this ____ day of _____, 2001.

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 BRIAN C. McNEIL
 EXECUTIVE SECRETARY

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DISSENT _____
 JR:mlj

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SERVICE LIST FOR:

NETWORK INTERNATIONAL, LC DBA NIL LLC

DOCKET NO.:

T-03616A-98-0486

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